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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,188

10/06/2005

Clinton W. Pike SR.

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07/25/2008

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EXAMINER

SAN MARTIN, EDGARDO

ART UNIT

PAPER NUMBER

2837

MAIL DATE

DELIVERY MODE

07/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,188

**Applicant(s)**

PIKE ET AL

**Examiner**

Edgardo San Martin

**Art Unit**

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2 and 4 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelin et al. (6,758,305) in view of Okuda et al. (US 5,858,521), and further in view of Holtrop (US 5,867,957).

With respect to claims 1, 9 and 18, Gelin et al. teach a sound absorbing wall system (Fig.1), comprising a wallboard material (Fig.1, Item 111); and a soundproofing material (Fig.1, Item 109) attached to the wallboard material, but fail to disclose the soundproofing material being adhere to the wallboard and wherein the soundproofing material consists essentially of a polyvinyl chloride composition and at least one filler.

On the other hand, Okuda et al. teach soundproofing material (Fig.1) being able to be adhered to a surface (Col.2, Lines 40 – 59, Col.4, Lines 28 – 30 and 49 – 60, and Col.5, Lines 42 – 57).

Holtrop teaches the use of a soundproofing material consists essentially of a polyvinyl chloride composition and at least one filler (Col.5, Lines 10 – 27).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Okuda et al. soundproofing material configuration and the Holtrop soundproofing material with the Gelin et al. sound absorbing wall

system because the Okuda et al. material could be adhered to the wallboard creating a single wallboard element, facilitating and simplifying the sound absorbing wall system assembly; and the Holtrop material would provide a material that is easy to maintain and resistant to stains, also it would facilitate temperature control.

With respect to claims 2, 4, 5, and 11 - 14, Okuda et al. teach wherein the soundproofing material is a laminate (Fig.1, Item 3; Col.4, Lines 28 – 30 and 49 – 60); and wherein the adhesive (Fig.1, Item 4) comprises a material chosen from at least one of a polyurethane, a silicone or an acrylic polymer (Col.1, Line 49 – Col.2, Line 23 and Col.5, Lines 42 – 57).

With respect to claims 6, 10 and 15 – 17, Gelin et al. teach wherein the wall board material with the soundproofing material adhered thereto is affixed to the studs, with the soundproofing material abutting the studs (Fig.1; Col.3, Lines 53 – 63).

With respect to claims 7, 8 and 20, Gelin et al. teach the limitations described in the claims (Col.4, Lines 36 – 53).

With respect to claim 19, the Examiner considers that it would have been an obvious matter of design choice to employ any desired type of filler appropriate for the application because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

***Response to Arguments***

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers that the obvious combination of the patents to Gelin et al., Okuda et al. and Holtrop teach the limitations described in the claims.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571)272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on (571) 272-2227. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Edgardo San Martin/

Edgardo San Martín  
Primary Examiner  
Art Unit 2837  
Class 181  
July 25, 2008